

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ARCHER-DANIELS-MIDLAND COMPANY	DOCKET NO. GCU-98-1
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PROPOSED DECISION AND ORDER

(Issued September 3, 1999)

APPEARANCES:

MR. RICHARD S. FRY, Attorney at Law, Shuttleworth & Ingersoll, P.C., 500 First Bank Building, 115 3rd Street S.E., Cedar Rapids, IA 52406-2107, appearing on behalf of Archer-Daniels-Midland Company

MR. BEN STEAD, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Office of Consumer Advocate, Iowa Department of Justice.

STATEMENT OF THE CASE

On August 17, 1998, Archer-Daniels-Midland Company (ADM) filed with the Utilities Board (Board) an application to amend its generating plant certificate pursuant to IOWA CODE chapter 476A (1997). ADM plans to expand its existing Cedar Rapids cogeneration plant from 150 to 250 MW. On September 11, 1998, the Board issued an order waiving the informational meeting provided for in IOWA ADMIN. CODE 199-24.7 (1998) because ADM will not be acquiring new land or easements to construct the proposed addition.

The Board issued an "Order Identifying Filing Deficiencies" on September 30, 1998. ADM supplemented its original filing with additional information on November 17, 1998.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an answer to ADM's application on September 3, 1998. Consumer Advocate indicated it needed additional time for discovery to determine what issues may be in dispute. On December 29, 1998, Consumer Advocate filed a pleading indicating it had no objection to the Board granting ADM's application to amend generating certificate.

The Board reviewed ADM's filings and found the application to be in substantial compliance with the Board's filing requirements. The Board accepted the filing, set a procedural schedule, and provided for the service and publication of the Board's action by order issued June 25, 1999. Notice of the hearing scheduled for August 9, 1999, was mailed to all owners and lessees of real property located within 1,000 linear feet of the proposed site pursuant to IOWA CODE § 476A.4(2)"c" (1999), as listed in ADM's application. In accordance with IOWA ADMIN. CODE 199-24.6(1)"c" (1999), notice was published in the Cedar Rapids Gazette and proof of publication was filed on July 21, 1999.

On July 30, 1999, the Board assigned the hearing in this docket to a presiding officer. A hearing was held on August 9, 1999, in Cedar Rapids, Iowa. Richard Neff, plant manager of the ADM plant in Cedar Rapids, testified on behalf of ADM. Official notice was taken of documents provided by the Iowa Department of Natural Resources (DNR) that relate to the DNR's environmental permit process. ADM and Consumer Advocate, the only parties to this proceeding, waived the opportunity to file briefs.

DISCUSSION OF THE EVIDENCE

ADM, in its application, requested a certificate of public convenience, use, and necessity to alter and operate its cogeneration plant in Cedar Rapids, Iowa. ADM operates a grain processing facility in Cedar Rapids and makes alcohol from corn for the production of alcohol used in automobiles and other gas-fueled engines. The existing cogeneration plant has a current capacity of approximately 150 MW. ADM seeks to add one 100 MW rated steam turbine generator such that the cogeneration plant would have a capacity of 250 MW. No testimony or other evidence was filed to dispute the facts or assertions contained in ADM's application.

ANALYSIS

IOWA CODE chapter 476A (1999) is the applicable chapter dealing with electric power generators. IOWA CODE § 476A.2 provides that a facility cannot be constructed or significantly altered without a certificate. A "facility" is defined in IOWA CODE § 476A.1(5) as "any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more. . . ." The proposed 100 MW addition would bring total capacity to 250 MW. Therefore, the certification provisions of IOWA CODE chapter 476A apply to ADM's application. While IOWA CODE § 476A.15 grants the Board the authority to waive any of the requirements of Chapter 476A, this waiver authority only applies to facilities with a total capacity of 100 MW or less.

IOWA CODE § 476A.6 lists six criteria for the Board to examine in determining whether to issue a generating certificate. However, of the six criteria, only the first three apply to ADM. The last three criteria, which require applicants to have in place a comprehensive energy management plan, to have considered sources for long-term electric supply, and to have considered all feasible alternatives to the proposed facility, apply only to public utilities as defined in IOWA CODE § 476.1. ADM is not a public utility as defined in this section because it does not furnish electricity to the public for compensation. Therefore, the last three criteria do not have to be satisfied by ADM.

The three criteria ADM must satisfy are:

1. The services and operations resulting from the construction of the facility are required by the present or future public convenience, use, and necessity.
2. The applicant is willing to perform such services and construct, maintain, and operate the facility pursuant to the provisions of the certificate and this chapter.
3. The construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact and are consonant with reasonable utilization of air, land and water resources for beneficial purposes considering available technology and the economics of available alternatives.

In its application, ADM states the proposed expansion will bring investment in equipment, enhance the value of ADM's facility, increase the number of employees, and increase the use of raw materials. ADM has satisfied the first statutory criteria.

ADM has consistently expressed its willingness to comply with the provisions of a certificate and the requirements of Chapter 476A. ADM's assertions were not challenged and, therefore, ADM has satisfied the second statutory criteria.

The third criterion deals with land use and environmental and aesthetic impact. The proposed addition is being constructed on land owned by ADM and is consistent with the area's current land use. With respect to environmental matters, the DNR has issued air quality permits (Exhibit 1), but those permits are on appeal. (Exhibit 2). Pursuant to IOWA CODE § 476A.5(1), a generating certificate cannot be issued until the DNR has issued final air quality permits. Therefore, only a conditional finding of compliance with the third criteria can be made. Because the presiding officer views DNR's final permits as conclusive evidence that applicable air quality standards are satisfied, a certificate for the generating addition will not be issued until the DNR notifies the Executive Secretary of the Utilities Board that final air quality permits have been issued. No additional hearing is required.

FINDINGS OF FACT

1. It is reasonable to conclude that the proposed facility will bring investment in equipment, enhance the value of ADM's facility, increase the number of employees, and increase the use of raw materials.
2. It is reasonable to conclude that the proposed facility will serve the public convenience, use, and necessity.

3. It is reasonable to expect that ADM will comply with any and all provisions of a certificate authorizing construction, operation, and maintenance of the proposed facility.

4. It is reasonable to conclude the proposed facility will have minimal land use and aesthetic consequences.

5. It is reasonable to conclude that if final air quality permits are issued by the DNR, the proposed facility will satisfy air quality standards and have minimal environmental consequences.

CONCLUSIONS OF LAW

1. The Utilities Board has jurisdiction of the parties and the subject matter of this proceeding pursuant to the provisions of IOWA CODE chapter 476A (1999).

3. Archer-Daniels-Midland Company, subject to the issuance of final air quality permits, has met the statutory criteria contained in IOWA CODE §§ 476A.6(1), (2), and (3).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Official notice is taken of Exhibits 1 and 2, provided by the Department of Natural Resources and relating to air quality permits and the appeal thereof. IOWA CODE §17A.14(4)(1999).

2. Pursuant to IOWA CODE Chapter 476A (1999), the application for an amendment to ADM's certificate of public convenience, use, and necessity is

granted, subject to final air quality permits being issued by the Department of Natural Resources. A certificate will be issued once final air quality permits are issued if this proposed decision and order becomes the final order of the Utilities Board.

3. The Utilities Board retains jurisdiction of the subject matter in this docket.

4. This proposed decision would become the final decision of the Utilities Board unless appealed to the Board within 15 days of its issuance. IOWA CODE § 17A.15(3) (1999); IOWA ADMIN. CODE 199-7.8(2).

UTILITIES BOARD

/s/ Gary D. Stump
Gary D. Stump
Presiding Officer

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa, this 3rd day of September, 1999.